STATEMENT OF EMERGENCY
907 KAR 20:020E

(1) This is an emergency administrative regulation which establishes that the Medicaid income standards in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals who aged out of foster care. The Affordable Care Act (ACA) mandates that effective January 1, 2014, the eligibility standard for the MAGI group will be a modified adjusted gross income and bars the application of existing Medicaid income standards to the MAGI population. Additionally, the Affordable Care Act created a new mandated eligibility category comprised of individuals between nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and barred the application of income or resource standards to this population. As Medicaid coverage under the new eligibility groups is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and under the former foster care individual rules from the income standards established in this administrative regulation.

(2) This action must be implemented on an emergency basis to comply with a federal mandate.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Emergency Amendment)

907 KAR 20:020E[~~907 KAR 1:640~~]. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 38 U.S.C. 5503, 42 U.S.C. 1382a, 1396jj(b), 1397aa, 9902(2)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. [~~Definitions. "ABD" means an individual who is aged, blind, or disabled.~~

~~(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.~~

~~(3) "Child" means a person who:~~

~~(a)1.a. Is under the age of eighteen (18); or~~

~~b. Is under the age of nineteen (19) if the person is:~~

~~(i) In high school or the same level of vocational or training school; and~~

~~(ii) Expected to graduate before or during the month of his 19th birthday;~~

~~2. Is not self-supporting;~~

~~3. Is not a member of the Armed Forces of the United States; and~~

~~4. If previously emancipated by marriage, has returned to the home of his parents or to the home of another relative; or~~

~~(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).~~

~~(4) "Family alternatives diversion payment" means a lump sum payment made to a K-TAP applicant to meet short-term emergency needs.~~

~~(5) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.~~

~~(6) "Income" means money received from statutory benefits (including Social Security, Veteran's Administration pension, black lung benefits, or railroad retirement benefits), pension plans, rental property, investments, or wages for labor or services.~~

~~(7) "Lump sum income" means money received at one (1) time which is normally considered as income, including accumulated back payments from Social Security, un-~~

~~employment insurance, or workman's compensation; back pay from employment; money received from an insurance settlement, gift, inheritance, or lottery winning; proceeds from a bankruptcy proceeding; or money withdrawn from an IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.~~

~~(8) "Medicaid works individual" means an individual who:~~

~~(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;~~

~~(b) Is a least sixteen (16), but less than sixty-five (65), years of age;~~

~~(c) Is engaged in active employment verifiable with:~~

~~1. Paycheck stubs;~~

~~2. Tax returns;~~

~~3. 1099 forms; or~~

~~4. Proof of quarterly estimated tax;~~

~~(d) Meets the income standards established in this administrative regulation; and~~

~~(e) Meets the resource standards established in 907 KAR 1:645.~~

~~(9) "Minor parent" means a parent under the age of twenty-one (21).~~

~~(10) "Official poverty income guidelines" means the poverty income guidelines which are:~~

~~(a) Updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2); and~~

~~(b) The latest poverty guidelines available as of March 1 of the particular state fiscal year.~~

~~(11) "SSI" means Supplemental Security Income Program.~~

~~Section 2.~~] Income Limitations. (1)(a) [~~For the medically needy, as described in 907 KAR 1:011,~~]Income shall be determined by comparing adjusted income as required by Section 2[~~3~~] of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600	$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

(b) For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall apply[~~be applicable~~] for a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e):

(a) [~~A pregnant woman or a child under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines~~;

~~(b) A child age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines;~~

~~(c) A child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines;~~

~~(d) A pregnant woman or child who would be eligible under provisions of 42 U.S.C. 1396a(l) or 1397jj(b) except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines as described in Section 9 of this administrative regulation;~~

~~(e)~~] A change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy;

(b)[~~(f) A targeted low-income child as specified in 907 KAR 1:011, Section 2(3)(h), shall have family income not exceeding 150 percent of the official poverty income guidelines.~~]

(3) The following special income limits and provisions shall apply[~~be applicable~~] for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for SSI[~~supplemental security income~~] benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. 435.122.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement[~~state supplementation~~] program for a pass through recipient as established in 42 C.F.R. 435.135.

(6) The following special income factors shall apply for a Medicaid works individual:

(a) Income for a Medicaid works individual’s spouse shall not exceed $45,000 per year;

(b) A Medicaid works individual’s unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and

(c) The combination of earned and unearned income for a Medicaid works individual shall be less than 250% of the official poverty income guidelines.

Section 2.[~~3.~~] Income Disregards. In comparing income with the scale established in Section 1[~~2~~] of this administrative regulation, gross income shall be adjusted as follows:

(1) In a TANF[~~an AFDC~~] or family related Medicaid case:

(a)[~~,~~] The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings.

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month.

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case or a Medicaid works individual, the applicable federal SSI disregards pursuant to 42 USC 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 USC 1396a(10)(E)(i), (ii), or (iv) or 42 USC 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard referenced in paragraph (a) of this subsection, shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4)(a)[~~In an AFDC or family related Medicaid case, a dependent child care work expense shall be allowed for a child who is living in the home of the caretaker and is related to the caretaker in accordance with 907 KAR 1:011, Section 5(9)(b), for full-time or~~

~~part-time employment.~~

~~(a) The dependent child care work expense shall be deducted after all other disregards have been applied.~~

~~(b) The dependent child care work expense allowed shall not exceed, per month:~~

~~1. $200 for full-time or part-time employment per child under age two (2);~~ or[~~and~~]

~~2. $175 for full-time employment or $150 for part-time employment per:~~

~~a. Child age two (2) or above; or~~

~~b. Incapacitated adult.~~

~~(3) For an AFDC-related] Medicaid case, a thirty (30) dollar and one-third (1/3) deduction of earned income shall be allowed in accordance with 921 KAR 2:016.~~

~~(4) Income disregards. The income disregards:~~

~~(a)~~] an ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b); and

(b) A Medicaid works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

Section 3.[~~4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the requirements established in this section. The following disregards and exclusions from income shall be applied:~~

~~(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time;~~

~~(2) An amount equal to the appropriate income limitations scale established in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and other individuals (not including the spouse or minor parent) living in the home whose needs are not taken into consideration in the Medicaid eligibility determination but are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability;~~

~~(3) Any amount actually paid by the stepparent or grandparent to an individual not living in the home who is claimed by him as a dependent for purposes of determining his personal income tax liability;~~

~~(4) A payment by the stepparent or grandparent for alimony or child support with respect to an individual not living in the household;~~

~~(5) Income of a stepparent or grandparent receiving SSI; and~~

~~(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.~~

~~Section 5.~~] Lump Sum Income. Except as established in Section 8, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4.[~~6.~~] Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan to achieve self support, IRWE deduction, or BWE[~~for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE)~~] deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A social security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual or Medicare qualified individual group 1 (QI-1)[~~Medicare qualified individual~~] until after the month following the month in which the official poverty guideline promulgated by the United States Department of Health and Human Services [~~U.S. Government~~]is published.

(6) Any amount received from a victim's[~~victims~~] compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses [~~(UME)~~]and aid

and attendance [~~(A&A) ~~]shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses [~~(UME) ~~]and aid and attendance [~~(A&A) ~~]shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses [~~(UME) ~~]and aid and attendance [~~(A&A) ~~]shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or[~~and ~~]SSI) shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. 435.122, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood

Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) [~~For an AFDC or family-related Medicaid case, a Medicaid recipient shall have the option to receive a one (1) time exclusion of two (2) months of earned income for new employment or increased wages acquired after approval and reported timely.~~

~~(17) For an AFDC-related or a family-related Medicaid case, interest and dividend income shall be excluded.~~

~~(18)~~] All monies received by an individual from the Tobacco Master Settlement Agreement[~~Tobacco Settlement between the states and tobacco manufacturers~~]shall be excluded.

(17)[~~(19)~~] Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1936p(d)(4) and 907 KAR 20:030[~~907 KAR 1:650~~], Section 3(5), shall be excluded.

Section 5.[~~7.~~] Consideration of Mandatory or Optional State Supplements[~~State Supplementary Payments~~]. For an individual receiving a mandatory or optional state supplement[~~state supplementary payment~~], that portion of the individual's income which is in excess of the basic maintenance standard, [~~(~~]established in Section 1(1)[~~2(1)~~] of this administrative regulation,[~~)~~] shall be applied to the special need which results in the supplement[~~supplementary payment~~].

Section 6.[~~8.~~] Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state

supplement, or optional state supplement[~~or state supplementary payment~~].

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement [~~or state supplementary payment~~]shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7[~~9~~] of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7.[~~9.~~] Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1)[~~2(1) of this administrative regulation~~] may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b)[~~(3)~~] Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point where the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point where the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. (1) The provisions and requirements of this administrative regulation shall:

(a) Apply to:

1. A child in foster care;

2. An aged, blind, or disabled individual; and

3. An individual who receive supplemental security income benefits; and

(b) Not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted

gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under sixty-five (65) with income up to 133 percent of the federal poverty level who:

1. Does not have a dependent child under the age of nineteen (19) years; and

2. Is not otherwise eligible for Medicaid benefits; or

(e) A targeted low income child with income up to 150 percent of the federal poverty level.

907 KAR 20:020E

REVIEWED:

Date	Lawrence Kissner, Commissioner Department for Medicaid Services

APPROVED:

Date	Audrey Tayse Haynes, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 20:020E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid eligibility income standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the income standards in this administrative regulation do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income (or MAGI) as the income standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. Additionally, it contains an amendment which allows for a disregard when an annual Social Security, railroad retirement or federal poverty level (FPL) cost-of-living adjustment (COLA) cause ineligibility for Medicaid benefits; clarifies how individual retirement account (IRA) withdrawals/disbursements are treated; deletes the definitions; and contains language and formatting revisions to comply with KRS Chapter 13A standards. Early IRA withdrawals (meaning withdrawals made before an individual can withdraw funds without being penalized) are treated as lump sum income for the month in which the individual withdrew the money, while income from an IRA withdrawal made after the individual has reached the age where no penalty exists for the withdrawal will be prorated over the period of time the withdrawal covers [quarterly - prorated over three (3) months - or annually - over twelve (12) months - for example.) Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level.

(b) The necessity of the amendment to this administrative regulation: Exempting the MAGI population and former foster care individuals from the income standards in this administrative regulation is necessary to comply with an Affordable Care Act mandate. The Affordable Care Act mandate (which establishes a MAGI income eligibility standard for certain individuals and bars the historical Medicaid income standards from being applied to the MAGI population and bars the use of any income standard to the former foster care population. The Social Security/railroad retirement/FPL COLA amendment is necessary to restore Medicaid eligibility for individuals adversely affected by their Social Security/Railroad Retirement COLA exceeding the federal poverty level COLA. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. The IRA withdrawal/disbursement amendment is necessary to clarify existing policy.

(c) How the amendment conforms to the content of the authorizing statutes: The MAGI and former foster care group exemptions conform to the content of the authorizing statutes by complying with Affordable Care Act mandates. The Social Security/railroad retirement COLA amendment conforms to the content of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA..

(d) How the amendment will assist in the effective administration of the statutes: The MAGI and former foster care group exemptions will assist in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates. The Social Security/railroad retirement COLA amendment will assist in the effective administration of KRS 194A.050(1) by protecting individuals from losing Medicaid coverage as a result of a Social Security or Railroad Retirement COLA exceeding the federal poverty level COLA.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The following will be affected by the amendment: Medicaid recipients who would have lost eligibility without the amending regarding the cost-of-living adjustment and individuals previously ineligible for Medicaid but who gain eligibility due to the income and resources requirements in this administrative regulation not applying to them. Additionally, the cost-of-living amendments preserve eligibility for anyone now or in the future (indeterminable) who would have lost eligibility. Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the

affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those that are exempt from the existing Medicaid income standards will benefit from having standardized (nationwide) and simplified income eligibility standard or no income standard. This will also help lower administrative costs associated with determining eligibility for individuals.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS anticipates no cost as a result of exempting the MAGI individuals or former foster care individuals from the requirements in this administrative regulation.

(b) On a continuing basis: The answer provided in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XXI of the Social Security Act and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment does not establish or increase any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits this.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:020E
Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

   KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

   Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

   States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.

42 U.S.C. 1396a(gg)(2) requires state Medicaid programs to continue (not eliminate or reduce) eligibility standards for individuals under nineteen (19) until October 1, 2019. This provision is known as a “maintenance of effort” provisions and the Centers for Medicare and Medicaid Services (CMS) has also provided guidance establishing the same maintenance of effort requirement for pregnant women.

42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:020E
Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
   (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the income standards in this administrative regulation nor from exempting former foster care individuals from the standards.
   (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the MAGI individuals from the income standards in this administrative regulation nor from exempting the former foster care individuals from the standards.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____
Expenditures (+/-): ____
Other Explanation: